



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary

State Water Project Contract Extension Project

December 17, 2013 10:00 AM – 3:00 PM

Draft Meeting Attendance List

<p><u>California Department of Water Resources Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Carl Torgersen, California Department of Water Resources • Ralph Torres, California Department of Water Resources <p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Dan Flory, Antelope Valley – East Kern Water Agency (by phone) • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin, Butte County • Valerie Pryor, Castaic Lake Water Agency • Tom Glover, Dudley Ridge Water District • Curtis Creel, Kern County Water Agency • Deven Upadhyay, MWD of Southern California • Kathy Cortner (by phone), Mojave Water District • Jon Pernula (by phone), Palmdale Water District • Bob Perreault, Plumas County Flood Control & Water Conservation District • Jeff Davis, San Geronio Pass Water Agency 	<ul style="list-style-type: none"> • Ray Stokes, Santa Barbara County/ Central Coast Water Authority • Dana Jacobson, Santa Clara Valley Water District • David Okita, Solano County Water Agency <p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich, California Department of Water Resources • Spencer Kenner, California Department of Water Resources • Kathie Kishaba, California Department of Water Resources • Philip LeCocq, California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources • David Sandino, California Department of Water Resources • Lisa Toms, California Department of Water Resources • Dena Uding, California Department of Water Resources • Pedro Villalobos, California Department of Water Resources
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<p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Erick Cooke (by phone), Environmental Science Associates • Cathy McEfee (by phone), Environmental Science Associates • Barbara McDonnell (by phone), MWH Global • Yung-Hsin Sun, MWH Global <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Bruce Alpert (by phone), Butte County • Dan Masnada (by phone), Castaic Lake Water Agency • Robert Cheng, Coachella Valley Water District • Milli Chennell, Kern County Water Agency • Don Marquez, Kern County Water Agency • Amelia Minaberrigarai (by phone), Kern County Water Agency • Ted Page, Kern County Water Agency • Jaime Dalida, MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California • Leah Wills (by phone), Plumas County Flood Control and Water Conservation District 	<ul style="list-style-type: none"> • Tom Faryam, Santa Barbara County • Matt Naftaly (by phone), Santa Barbara County • Brian Pettit, Santa Barbara County • Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District • Eric Chapman, State Water Contractors, Inc. • Theresa Lightle, State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc. <p><u>Public</u></p> <ul style="list-style-type: none"> • Debbie Espe, San Diego County Water Authority • Dan McDaniel (by phone), Central Delta Water Agency • Patricia Schifferle, Planning and Conservation League <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> • Alex Braunstein, Kearns & West • Mike Harty, Kearns & West • Kelsey Rugani, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West, Kearns & West, reviewed the Meeting Ground Rules emphasizing respect and listening. She also reviewed the process for public comment at the end of the meeting. Anna outlined the negotiation session agenda.

Anna then reviewed the November 14, 2013 and November 19, 2013 negotiation session summaries and asked if there were any further edits to the meeting summaries. The group finalized both summaries which will be posted on the website.

III. Objectives Discussion

After reviewing the SWP Contractors' Fifth Offer, Carl Torgersen, DWR, shared that there are many areas of agreement between DWR and the Contractors. Carl provided an overview of the following key points describing where there is general agreement and where more discussion is needed, both internally to DWR and between DWR and the Contractors.

- The term of contract is still to be discussed later in the negotiation process (I. Objective 1: Term of Contract).
- GOA notice of use requires more discussion (II. Objective 2A: Reserves, A. General Operating Account (GOA), 10).
- SRA management needs more discussion as well as how loan terms have the potential to change in the future (II. Objective 2B: Accounts, A. SWRDS Reinvestment Account (SRA)).
- DWR will put together specific comments on the SSA (II. Objective 2B: Accounts, B. SWRDS Support Account (SSA)).
- DWR is looking into keeping the Facilities Capital Account in place, with the Director having discretion on when to close the account (II. Objective 2B: Accounts, C. State Water Facilities Capital Account (FCA)).
- Flow of Funds needs more discussion. DWR is having internal discussions, but is primarily concerned about the Contractors' proposed annual rate reduction increase (and limitations on the accounts (IV. Objective 2C: Flow of Funds, A. Maintain the Monterey Amendment Article 51 Flow of Funds, 1 and 2)).
- DWR does not think the SWRDS Finance Committee Charter should be included in the Contract Amendment (V. Objective 2D: Financial Management, A. State Water Resources Development System Finance Committee, 4).
- DWR thinks the supplemental billing stipulation should be included in the Contract Amendment through 2035, and then it would no longer exist after 2035 (VI. Objective 2E: Supplemental Billing).
- There is agreement on Objective 3A, but the specific dates may change to closer align with the signing of the Contract Amendment. For example, it may say immediately upon signing of the Contract Amendment rather than a specific date (VII. Objective 3A: Simplification of Billing, A. Implement the Freeze-Go Billing Methodology).
- DWR needs to discuss the Replacement Accounting System (RAS) (VIII. Objective 3B: Replacement Accounting System (RAS)).
- There is general agreement on Objective 3C (IX. Objective 3C: Article 1(hh)).
- DWR would like clarity on the "placeholder" in Objective 3D (X. Objective 3D: Billing Authorization).

David Okita, Solano County Water Agency, responded that the increase in rate management credits is in response to DWR's request for the waiver issues to be resolved. The amount of the increase, like other terms of the settlement at this stage, is understood to be negotiable.

Regarding the placeholder in Objective 3D, Deven Upadhyay, Metropolitan Water District of Southern California, shared draft language about Fish and Wildlife and recreation-related non reimbursable costs. Deven stated that the purpose of these draft principles is to ensure that the

Contractors are not charged for these costs in the future, as they have been in the past. The language defines what the types of costs are considered Enhancement of Fish and Wildlife and Recreation costs and if, in the event that these costs are charged to the Contractors, they can deduct the costs from their bills without filing a notice of protest. He explained that the first three paragraphs are based on the Water Code.

Perla Netto-Brown, DWR, asked who would determine whether these costs should or should not be billed to the Contractors. Would DWR and the Contractors discuss together? Deven answered that if the Contractors are billed for these costs and it is realized after the bills are issued, the Contractors will have the option not to pay those charges. If the Contractors are engaged by DWR to discuss the charges prior to billing, the Contractors would appreciate and want that discussion to occur. Perla responded that changing how DWR bills the Contractors is a fundamental change to how DWR has operated in the past and could have potential implications to DWR's bond rating. Deven understood Perla's concern and said that since the Contractors should not have been billed for these costs in the past and the Water Code states that they cannot reimburse the costs, they should not be charged in the future. It is important for the Contractors to understand where their money is going.

The group then moved to reviewing the Finance Committee. Carl asked if the Contractors considered DWR's draft definition of "SWRDS financial processes" before editing the draft SWRDS Finance Committee Charter. David said yes, the definition was referenced, but that the Contractors believe that the processes definition limits the scope of the Committee. Carl thinks that this is an area where the Contractors and DWR have fundamental disagreement. DWR envisions that the Committee will develop and approve the work plan and will continue to function after the work plan is approved. DWR does not envision that the Committee would approve budgets or specific projects, since these are tasks that need to be approved by the Director. David responded that the Contractors do not envision the Committee approving budgets or specific projects either.

Carl also stated that the Contractors and DWR need to determine how the Committee will function and what issues they will discuss before hiring the SWRDS Chief Financial Manager (CFM). Tom Glover, Dudley Ridge Water District, previously suggested that the CFM be the owner of the process and would have authority over SWRDS finances. Carl did not disagree and said that a project should occur to determine how the single point of authority for SWRDS financial matters would work with non State Water Project divisions. David suggested that the CFM job description needs to be clear and that the Contractors will discuss that in a later caucus.

The Contractors then reviewed their draft document definition of "SWRDS finances." Deven shared that it is important to define that SWRDS finances are those activities performed to plan, organize, direct and control SWRDS assets, liabilities, equity, revenues and expenditures. The Contractors envision having the Committee look at larger scale issues related to SWRDS finances and having DWR seek out the Committee for financial input. After comparing the Contractors' definition to the Department's definition of "SWRDS financial processes," Steve Cohen, DWR, suggested that the Contractors' definition is too open ended; arbitrary or inappropriate issues could be brought to the Committee. David responded that since the Committee is only making recommendations on issues compared to approval, the Contractors would like the Committee to be an open forum to discuss broad and expansive SWRDS financial issues.

Perla said that the definition of SWRDS finances leads her to believe that the Committee will review transactional data as opposed to overall processes of how DWR forecasts, reports, etc. Ray Stokes, Santa Barbara County/Central Coast Water Authority, answered that issues with transactional data will be discussed at the technical work group level. Recommendations from the technical work groups would then go to the Committee for a final recommendation to the Director. Ralph Torres, DWR, said that the definition does not exclude those technical types of issues from going to the Committee.

Following a caucus, David reported that the Contractors discussed having the Committee develop two separate work plans. One work plan is the existing Program Control work plan currently under development by DWR. . The Contractors' understanding is that this work plan includes performing a gap analysis to establish the CFM role and the process of determining how the CFM position would function in DWR's existing structure, particularly amongst non-State Water Project related divisions. The second work plan would be developed after the CFM is established and may result in multiple work plans over time. Carl said that he agreed with this structure, but that it is important to consider that the first work plan may be executed prior to the Contract Amendment being signed.

Prior to the caucus, DWR and the Contractors agreed that the Committee would not approve individual projects or individual transactions. Mike Harty, Kearns & West, asked if the Committee would still discuss the individual projects or transactions even if they do not approve them. David responded that the Committee would discuss the projects and transactions in a broader context; the Committee would discuss budgeting policies and budgeting processes. For example, David said that the Committee would not look at the engineering budget and recommend 400 engineers instead of 300 engineers, but if there is a policy about how the engineering budget is depicted to the Contractors or how it is reported to the Contractors, the Committee would discuss that policy. Ray also shared an example. He said that during the financial crisis the Contractors requested a 5% reduction in the O&M budget. If that type of financial situation were it to occur again, the Committee would recommend the reduced O&M budget recommendation to the Director. Ray affirmed that project by project situations will not be discussed in the Finance Committee. If a certain process is being applied and there are negative results, the process would be discussed by the Committee to determine if a different process is needed. DWR and the Contractors were in general agreement on the Committee's scope based on the above examples, but there was uncertainty about the difference between the terms being used, and the implications of defining the scope of the committee in terms of policies or processes.

To DWR policies are broader than processes and encompass more issues. Perla Netto-Brown said that every scenario discussed in the meeting thus far had been a process, but since the Contractors are using the term policy, there is confusion. David Okita said that the terminology does not matter as long as the Committee has the flexibility to bring issues to the table that are of concern and that do not impede on the Director's discretion.

Then there was a discussion of the Contractor's edits to the Charter including language on co-chairs and the ability of the co-chairs to put a topic on the agenda of the Finance Committee and determine when a meeting of the Finance Committee is needed. Carl Torgersen suggested that instead of co-chairs the Department suggested a Chair (the DWR SWP Deputy Director), and Vice Chair who would be a Contractor. Curtis Creel, Kern County Water Agency, said that it could

be included in the Charter that the Chair and Vice Chair will decide what goes on the agenda and what does not. Carl agreed that a mechanism needs to be in place to ensure that certain superfluous items are not added onto the agenda. The Chair and Vice Chair could be that mechanism, or filter. Carl added that the Chair and Vice Chair would weigh potential agenda items against the purpose of the Committee established in the Charter as a way to determine if the topic is relevant for the Committee. It would also be helpful to insert some language about assessing the Committee after a certain amount of years. David said that the Contractors will discuss that idea in a future caucus, but suggested that it sounds possible, and similar to what has been done in similar situations.

Deven asked what the difference between the Chair and Vice Chair would be. Carl responded that since the Committee is a committee within the Department, the Chair would need to be a DWR staff member. Curtis asked what would occur if the Chair says no to an agenda item and the Vice Chair says yes. Carl Torgersen suggested that if either the Chair or Vice Chair thinks it should go on the agenda, it would go on the agenda. Ray asked that since the Committee will purely make recommendations, if an issue is brought up that DWR does not view as appropriate for the Committee, what the concern is with making a recommendation if the Director could choose not to consider it. For example, if the Contractors believe the Springing Amendment is an issue and would like the Committee to discuss it, the Director would still have discretion to consider the recommendation or not. Carl responded that the Charter should establish what types of issues will go the Committee. Although not every issue could be listed out, DWR does not want to include such a broad scope that the Committee discusses irrelevant issues.

DWR and the Contractors adjourned for lunch.

IV. Objectives Discussion Continued

After lunch, Carl Torgersen suggested that a process could be established where any proposed agenda item would need to be submitted in writing to the Chair and Vice Chair, who would ultimately decide what agenda items would be discussed. The written proposal would describe why the certain issue is appropriate to be discussed in the Committee; perhaps a template could be developed. David Okita said the Contractors do not foresee an issue with submitting potential agenda items in writing in advance.

David Reukema, Metropolitan Water District of Southern California, provided more detail about the Contractors' definition of SWRDS finances. He said that the Contractors structured the definition around DWR's definition of SWRDS financial processes. When discussing financial issues, almost everything is linked together so the Contractors tried to encompass the broad nature of the SWRDS financial system in the definition. As a way of illustration, the Contractors provided some examples of the different types of activities the Committee would discuss. David Okita added that the Contractors envision the CFM's tasks including some tasks that are currently executed by DWR Fiscal.

Carl asked if practices and procedures would be broader terms compared to processes. David Okita responded that the Contractors do not want to limit the scope of the Committee. He interprets practices and procedures as the financial mechanics and not high-level policy issues. He suggested that the entire Charter be used to screen what issues are brought to the

Committee. The SWRDS finances definition would be included and a paragraph could be added describing what the Committee will and will not encompass.

After more discussion about the difference between policy and process, Ray said that implementation of Davis-Dolwig is a high-level issue that would need policy level direction from the Committee. Carl said that if the Chair and Vice Chair agree that a solution or recommendation is needed to solve a process issue associated with Davis-Dolwig then yes, the Committee would discuss it. Deven asked if Carl could provide one to two examples of issues DWR would not want the Committee to discuss. Carl answered that discussing a 20-year capital infrastructure rehabilitation program, or deciding whether to rebuild Thermalito, or looking into a low level outlet at Oroville Dam are examples of issues not to discuss. He said that these issues are very large and would require a lot of investment and consideration by DWR staff. David affirmed that the Committee will discuss high-level issues and would not discuss individual projects unless there is a related financial or allocation issue. Carl said that they are in agreement on discussing high-level issues and not individual projects, but the actual language is where the confusion lies. Curtis Creel, Kern County Water Agency, noted that such discussions may include how and when to proceed with a project in order for DWR and the Contractors to prepare themselves financially.

Perla asked why balance sheet issues are included in the Contractors' definition of SWRDS finances. What types of issues would come to the Committee regarding balance sheets? If a Contractor came to DWR for a loan, would the Committee review that? David said no, but the Contractors could review the policy on how DWR funds or assists Contractors. For individual Contractor affairs, the Committee would not be involved.

Jeff Davis, San Geronio Pass Water Agency, suggested that a section on intent be added to the draft Charter. It could describe what is and what is not the intent of the Committee. By having the broader definition followed by a section on intent (examples of what is relevant for committee review and what isn't relevant) could assist in determining what issues will come to the Committee. DWR and the Contractors agreed this would be a good idea. Carl asked if intent language is drafted, would other parts of the Charter be removed such as the section on responsibilities. David answered that if the right definition, purpose and intent are in there, some detail may not be needed. David said that what content will be in the Charter and what content will be in the Contract Amendment still needs to be discussed; some language may be appropriate to include in a white paper.

Regarding the Flow of Funds, Carl said there is no agreement yet on having three accounts for 51(e) revenues. DWR is looking into having four accounts: GOA, SSA, SRA, and a subaccount within the Systems Revenue Account for all remaining 51(e) funds. DWR agrees with having the Committee review reports on this 51(e) subaccount, and making recommendations regarding the level of the SRA, with interest rates varying over time. Curtis asked how DWR will determine how much of the 51(e) revenues in the Systems Revenue Account would be allocated amongst the GOA, SSA and SRA. Curtis added that since DWR has to make estimates and cannot reconcile all funds for a number of years, it is important not to deplete 51(e) revenues. Carl said that DWR would determine a portion of 51(e) revenues to move into the accounts. For example, DWR may move 80% of their estimate of funds into the GOA so that the Department will always have some 51(e) revenues left in the Systems Revenue Account, until all of the funds are reconciled.

DWR could do this on an annual basis until the GOA, SSA and SRA are built up and would generate reports for the Director that would be shared with the Committee. Deven asked if DWR could include language on 51(e) revenues reporting in their next Offer. Carl said yes.

Perla said that the language on SRA Replenishment in the Contractors' Fifth Offer needs to be clarified. If a loan is taken out of the SRA, for example, the SRA could be replenished, however, the Offer, as stated, does not leave room for replenishment of the SRA. David Okita agreed and said the language could be edited. Curtis Creel responded that in the Contractors offer, the repayments would flow back into the SRA.

Anna West asked if, in the Department's next edits to the Contractors Fifth Offer, previous language on Objective 4 on the Bay-Delta Conservation Plan (BDCP) could be included. Carl affirmed they would do so.

V. Next Steps

Anna reviewed and the group agreed to the actions listed below.

VI. Public Comment

Anna asked if anyone wanted to provide public comment. No one volunteered.

VII. Adjourn

The meeting was adjourned.

Action Items		Responsibility Due Date
1.	Post November 14 and 19 Negotiation Session Meeting Summaries to the website.	K&W ASAP
2.	SWP Contractors to draft a section on definitions, and intent (what is intended, what is not intended for the Committee) in the draft SWRDS Finance Committee charter.	SWP Contractors 12/31
3.	DWR to draft the written process for bringing an agenda item to the SWRDS Finance Committee.	DWR 12/31
4.	DWR to draft a full Counter Offer (track changes to the Contractors' 5 th Offer).	DWR 12/31
5.	DWR to provide a response on the Charter definitions/intent language if possible in advance of the next meeting.	DWR 1/8
6.	The next negotiation session is scheduled for January 8 th at 10:00 am in room 1131 in the Resources Building (unless otherwise notified).	
7.	Draft December 17 Negotiation Session Meeting Summary.	K&W ASAP